UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA STATESVILLE DIVISION 5:20-cv-78-KDB

(5:16-cr-41-KDB-DCK-1)

BYRON JOSEPH KNOX,)	
Petitioner,)	
VS.)	<u>ORDER</u>
UNITED STATES OF AMERICA,)	
Respondent.)	
)	

THIS MATTER is before the Court on a Motion to Stay filed by counsel for Petitioner, (Doc. No. 3).

Petitioner filed a Motion to Vacate pursuant to 28 U.S.C. § 2255 through counsel on June 17, 2020. He seeks relief pursuant to Rehaif v. United States, 139 S.Ct. 2191 (2019). (Doc. No. 1). The Court has ordered the Government to respond to the § 2255 Motion to Vacate. Petitioner asks the Court to hold the § 2255 Motion to Vacate in abeyance pending the issuance of the Fourth Circuit's mandate in <u>United States v. Gary</u>, 954 F.3d 194 (4th Cir. 2020), which is presently pending on the Government's petition for *en banc* review. Petitioner argues that his § 2255 Motion to Vacate depends in part on the Fourth Circuit's holding in <u>Gary</u> that a defendant can establish "structural error" by showing that a guilty plea was entered without an understanding of the knowledge element articulated in <u>Rehaif</u>. AUSA Amy Ray consents to this Motion to Stay. (Doc. No. 3 at 2).

The Court finds that the Motion to Stay is in the interest of justice and judicial economy

¹ Counsel for the Government has not yet entered an appearance in this case.

and will be granted.

IT IS, THEREFORE, ORDERED that:

- 1. Petitioner's Motion to Stay, (Doc. No. 3), is **GRANTED**.
- 2. This case is held in abeyance pending the Fourth Circuit's issuance of a mandate in pending the issuance of the Fourth Circuit's mandate in <u>United States v. Gary</u>, 954 F.3d 194 (4th Cir. 2020). The Government shall have **30 days** following the Fourth Circuit's issuance of its mandate in <u>Gary</u> file an answer, motion, or other response to the § 2255 Motion to Vacate.

Signed: June 18, 2020

Kenneth D. Bell

United States District Judge